

The opinion in support of the decision being entered today was *not* written for publication in and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT MECHALEY, JR. and RICHARD A. MINER

Appeal 2007-0066
Application 08/804,900
Technology Center 3600

Decided: March 19, 2007

Before ANITA PELLMAN GROSS, STUART S. LEVY and
ANTON W. FETTING, *Administrative Patent Judges*.
FETTING, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This appeal involves claims 1-8, 25, and 26,. Claims 27-37 stand withdrawn from consideration (Br. 2). We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6.

We AFFIRM.

The Appellants' invention relates to brokering upgraded resources for enabling greater functionality for a product function. (Spec 3). An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

1. A computer implemented and user interactive method of controlling provision of software components from a set of software components, wherein composition of the set is predefined and each software component thereof provides a distinct functionality, the method comprising:

providing a computer system with a subset of software components from said set of software components;

collecting usage data describing user interaction with the subset of software components;

analysing said usage data so as to identify a usage data pattern;

identifying a software component from the set based on said identified usage data pattern and predetermined rules specifying a relationship between usage of a first software component and selection of a second, different, software component, both said components being within said predefined set of software components; and

alerting the user to an availability of said identified software component, wherein said identified component is not within the subset of software components.

Appeal: 2007-0066
Application: 08/804,900

PRIOR ART

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Abelow	US 5,999,908	Dec. 07, 1999 (effectively filed May 16, 1994)
Majmudar	EP 0,365,200 A2	Apr. 25, 1990

REJECTION

Claims 1-8, 25 and 26 stand rejected under 35 U.S.C. § 103(a) as obvious over Abelow and Majmudar.

The Examiner applied Majmudar to show a specific instance of alerting the user to, and adding, a software component, and Abelow to show collecting and analysing usage data to determine when a software component should be added.

Rather than reiterate the conflicting viewpoints advanced by the Examiner and the Appellants regarding the above-noted rejection, we make reference to the Examiner's answer (mailed June 19, 2006) for the reasoning in support of the rejection, and to Appellants' Brief (filed January 17, 2006) for the arguments thereagainst.

ISSUES

The issues under contention in this appeal are

- Whether the art applied describes a set that is predefined

- Whether the art applied describes collecting usage data describing user interaction with the subset of software components
- Whether the art applied describes analysing usage data so as to identify a usage data pattern
- Whether the art applied describes identifying a software component from the set based on the identified usage data pattern and predetermined rules specifying a relationship between usage of a first software component and selection of a second, different, software component, both components being within said predefined set of software components
- Whether the art applied describes alerting the user to an availability of the identified software component, where the identified component is not within the subset of software components
- Whether there is motivation to combine the art that has been applied

In particular, the Appellants contend that Abelow's products evolve so that software is not predefined (Br. 6); that customers request updates rather than having the system identify a software component (Br. 6-7); that Abelow collects data for product design rather than for a usage data pattern that identifies a software component (Br. 7); that Abelow does not use predetermined rules specifying a relationship between software components (Br. 7); that Abelow introduces new software components based on user preferences rather than on usage data (Br. 7); that Abelow provides no details on selecting products (Br. 8); that Majumadar only selects components based on explicit user selection (Br. 8-9);

that Majumadar does not alert the user to a component (Br. 9-10); and that there is no motivation to combine Abelow and Majumadar (Br. 10-11).

FINDINGS OF FACT

The following facts pertinent to the above issues are supported by a preponderance of the evidence.

Majumadar shows a screen that is displayed each time a user lifts a handset (col. 5, ll. 48-50).

Majumadar shows that one button on this screen is a feature select button, that, when touched, presents the features available (col. 8, ll. 6-9).

Majumadar teaches that its features are implemented by software components (col. 6, ll. 40-49 and col. 7, ll. 33-35).

Thus, a feature in Majumadar corresponds to one or more software components.

Thus, Majumadar describes a predefined set of software components.

Majumadar shows that a feature can be added by pressing a button in the available features screen (col. 6, ll. 27-31).

Thus, Majumadar describes collecting and analyzing the keystrokes, i.e. usage data describing user interaction, with the buttons on the feature screen to identify the usage data pattern consisting of the selected features. Mijumadar's software collects each keystroke and analyzes the keystroke to direct the software flow.

Thus, Majumadar's description of software controlling the keystrokes required to display the available features and select one of the features describes software

composed of predetermined rules specifying a relationship between the usage of the keys in the software component providing the features screen and selection of a different feature, implemented by a separate software component, both the features screen and the new feature software being in the predefined set of software components.

Further, Majumadar's feature screen alerts the user to an availability of the identified feature, and implicitly to its implementing software component, where the feature and component are not already within the subset of components present.

Abelow describes a Customer Based Product Design Module (CB-PD Module) that it embeds in products (col. 9, ll. 18-21).

Abelow's CB-PD Module interacts with a customer, stores Aggregate Customer Desires resulting from those interactions, receives signals of specific types of events, such as turning on/off and activation of features, and communicates with the vendor (col. 10, ll. 55-64).

Thus, Abelow also describes collecting and analyzing usage data describing user interaction with the subset of software components to identify a usage data pattern.

Abelow shows examples of using its CP-BD module, including those of:

- on-line customer support built into the product and responsive to individual customer needs;
- interactive performance support systems that measure customer productivity, recommend productivity improvements, and assist customers in achieving them; and

- point-of-use transactions for customers to buy additional products and services from vendors through products (col. 13, ll. 50-58).

Thus, Abelow alerts the user to an availability of a software component having a product improvement, where the component is not within the subset of components already in the product.

Abelow describes the use of its CB-PD modules as checking trigger points initiated by the CB-PD module or the customer and collecting Aggregate Customer Desires from customer interactions following these trigger points that are used to improve products and services. Customers provide this interaction while the products are being used. (col. 17, l. 43 – col. 18, l. 23).

Abelow describes using the CB-PD module to deliver dynamic product improvements through on-line communications to upgrade existing products while they are in the hands of customers.

A product upgrade through software adds the features implemented by that software. A software upgrade is a species of the genus software module.

Abelow describes its CB-PD module as used for faster, easier, more direct and broader means for learning customer requirements, measuring actual performance, communicating that information in automatically analyzed formats, and responding to customers and users dynamically based on their group or individual objectives and performance measurements (col. 2, ll. 6-12).

Products such as Majumadar's require learning customer requirements as evidenced by its feature screen that accepts data regarding features to be added.

Thus, a person of ordinary skill in the art would have been led to Abelow from Majumadar to improve Majumadar's learning of customer needs.

ANALYSIS

Claims 1-8, 25 and 26 rejected under 35 U.S.C. § 103(a) as obvious over Abelow and Majmudar.

We note that the Appellants argue these claims as a group. Accordingly, we select claim 1 as representative of the group.

The above facts show that, by a preponderance of substantial evidence:

- The art applied describes a set that is predefined.
- The art applied describes collecting usage data describing user interaction with the subset of software components.
- The art applied describes analysing usage data so as to identify a usage data pattern.
- The art applied describes identifying a software component from the set based on the identified usage data pattern and predetermined rules specifying a relationship between usage of a first software component and selection of a second, different, software component, both components being within said predefined set of software components.
- The art applied describes alerting the user to an availability of the identified software component, where the identified component is not within the subset of software components.

- It would have been obvious to a person of ordinary skill in the art to have applied Abelow's CB-PD module as used for faster, easier, more direct and broader means for learning customer requirements, measuring actual performance, communicating that information in automatically analyzed formats, and responding to customers and users dynamically based on their group or individual objectives and performance measurements of products to Majumadar's phone system to improve learning of customer requirements.

As to the Appellants' contentions, Majumadar clearly predefines its set with the features listed on the features screen. Further, the claims do not specify the criteria of predefinition so that even Abelow's provision of product upgrades is within the set of software modules that are predefined as supporting the given product. Abelow shows that its data collection is actual usage data, analyzed to portray how the user prefers to use the product, by which suggestions for additional capabilities are inferred and presented. Majumadar's explicit user selection is usage, and following the user input is collecting usage data. Majumadar's alert to a feature is implicitly an alert to the software component implementing such a feature.

Accordingly, the Examiner has presented a prima facie case supported by a preponderance of substantial evidence and the Appellants have not shown that the Examiner erred in this rejection. We therefore sustain the Examiner's rejection of claims 1-8, 25 and 26 under 35 U.S.C. § 103(a) as obvious over Abelow and Majmudar.

Appeal: 2007-0066
Application: 08/804,900

CONCLUSION

To summarize,

- The rejection of claims 1-8, 25 and 26 under 35 U.S.C. § 103(a) as obvious over Abelow and Majmudar is sustained.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).

AFFIRMED

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